

Atty Dkt. No.: 10002969-1  
USSN: 09/625,916

## REMARKS

### Formal Matters

Claims 1-20 are pending and stand rejected.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

### Rejection of Claims 1-20 for Obviousness-Type Double Patenting

Claims 1-20 stand rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-20 of U.S. 6,647,347.

The Applicants categorically disagree with this rejection.

However, solely to expedite prosecution, the Applicants provide herewith a terminal disclaimer over US patent 6,647,347.

The Applicants note that the filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection.<sup>1</sup> As such, while the Applicants firmly believe that this rejection fails to meet the requirements for Obviousness-Type Double Patenting set forth in MPEP § 804, a terminal disclaimer is filed to obviate the rejection.

Withdrawal of this rejection is respectfully requested.

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<sup>1</sup> *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

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**CONCLUSION**

The applicants respectfully submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Timothy Joyce at 650 485 4310. The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-1078.

Respectfully submitted,

Date: \_\_\_\_\_

10/26/04

By: \_\_\_\_\_

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